

ORDINANCE ADOPTING IMPACT FEE PROCEDURES FOR
THE IMPOSITION, CALCULATION, COLLECTION, ADMINISTRATION AND
EXPENDITURE OF SCHOOL IMPACT FEES TO BE IMPOSED
ON NEW RESIDENTIAL CONSTRUCTION

WHEREAS, the County is authorized to establish and impose School Impact Fees on new Residential Construction to finance new School Facilities necessitated by such new Residential Construction pursuant to G.S. §§ 153A-102, 153A-121, 153A-340ff, Article IX, Sec. 2(2) of the North Carolina Constitution, and the common law powers of the County; and

WHEREAS, the County is experiencing rapid growth accompanied by accelerating growth in public school enrollment that leads to overcrowded School Facilities; and

WHEREAS, new Residential Construction has generated the need for School Impact Fees so that existing levels of school services will continue to be provided and so that future deficiencies in School Facilities will be prevented from occurring; and

WHEREAS, all moneys collected from School Impact Fees will be deposited in the School Impact Fee Fund which clearly identifies those monies as School Impact Fees; and

WHEREAS, this Ordinance is consistent with the Durham County/City Comprehensive Plan; and

WHEREAS, the County has adopted a capital improvements plan through 2010 based on the Durham Public Schools Board of Education's school facilities capital plan.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF DURHAM DOTH ORDAIN:

1. That the Durham County Code of Ordinances is hereby amended by adding a chapter, to be numbered Chapter 7, which chapter reads as follows:

Chapter 7

SCHOOL IMPACT FEES

ARTICLE I - GENERAL

Sec. 7-1. Purpose and Intent.

The purpose and intent of this Ordinance is:

A. To establish uniform School Impact Fees throughout the County and establish procedures for the imposition, calculation, collection, administration and expenditure of School Impact Fees imposed on new Residential Construction; and

B. To facilitate the implementation of the goals, objectives and policies of the Durham County Comprehensive Plan relating to assuring that new Residential Construction contributes its fair share towards the costs of school facilities necessitated by such new Residential Construction; and

C. To ensure that new Residential Construction is reasonably benefitted by the provision of the Public School Facilities provided with the proceeds of School Impact Fees; and

D. To impose a school impact fee of not more than fifty percent (50%) of the actual cost of providing for school capital needs; the remaining fifty percent of cost to be provided by the State and County governments; and

E. To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

Sec. 7-2. Definitions.

The words or phrases used herein shall have the meaning prescribed in the current Durham County Code of Ordinances except as otherwise indicated herein:

“Accessory Building or Structure” shall mean a detached, subordinate building, the use of which is clearly incidental and related to the use of the principal residential building or use of the land and which is located on the same lot as the principal residential Building or use.

“Administrator” means the County Manger or his designee.

“Applicant” shall mean any person who files an application for a Building Permit, and/or a Certificate of Occupancy, and/or a Manufactured home permit and/or final inspection.

“Appropriation or to appropriate” shall mean an action by the School Board to identify specific School Facilities for which School Impact Fee may be utilized pursuant to this Ordinance.

“Appeal” shall mean any appeal of a determination made by the Administrator as allowed by Sec. 7-37 of this Ordinance.

“Board” shall mean the Board of County Commissioners of Durham County, North Carolina.

“Building” shall mean any permanent structure designed or built for the support, enclosure, shelter or protection of persons, chattels, or property of any kind.

“Building Permit” shall mean the official document or certificate issued by the County or the Cities under the authority of ordinance or law, authorizing the commencement of construction of any Building, or parts thereof, as new Residential Construction.

“City or Cities” shall mean the cities of Durham, Raleigh, the Town of Chapel Hill, and the Camp Butner Reserve.

“Comprehensive Plan” shall mean the various plans making up the Durham County Comprehensive Plan inclusive of all its elements, goals, objectives, policies, maps and official amendments which have been adopted by the Board.

“County” shall mean the County of Durham, a political subdivision of the State of North Carolina.

“County Attorney” shall mean the Person appointed by the Board to serve as its counsel pursuant to G.S. § 153A-114, or the designee of such person.

“Development” shall mean the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, the dividing of land into three or more parcels, including any of the activities defined as “development” under Article 18 of Chapter 153A of the General Statutes of North Carolina.

“Dwelling Unit” means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

“Encumbered” shall mean monies committed by contract or purchase order in a manner that obligates the County or the School Board to expend the Encumbered amount upon delivery of goods, the rendering of services or the conveyance of real property by a vendor, supplier, contractor or owner.

“Family” shall mean one (1) or more persons who live together in dwelling unit and maintain a common household.

“Manufactured Home” shall mean a structure as defined in G.S. § 143-143.9(6).

“Multi-Family Dwelling Unit” shall mean a Building or a portion of a Building, regardless of ownership, containing more than one Dwelling Unit designed for occupancy by one family, where the units are attached and not customarily offered for rent for only one day. Multi-Family Dwelling Unit includes attached apartments and condominiums.

“Owner” shall mean the Person holding legal title to the real property upon which new Residential Construction is to be built.

“Person” shall mean a corporation, company, association, society, firm, partnership, a joint stock company, as well as an individual, state, all political subdivisions of state, or an agency or instrumentality thereof.

“Public Schools” shall mean all schools operated by law under the control of the School Board.

“Residential” or “Residential Use” means Multi-Family Dwelling Units, Manufactured Homes or Single-Family Detached Houses as they are defined by this Ordinance.

“Residential Construction” shall mean the construction or establishment of a Residential Use that occurs after the effective date of this Ordinance.

“Restrictive Covenant” shall mean a provision in a deed limiting the use of the property by providing that no one under the age of 21 is permitted to permanently reside on the property.

“School Board” shall mean the governing board for the Durham Public Schools; the body that operates, controls, and supervises all free public schools within the County of Durham, North Carolina, as authorized by Article IX of the Constitution of the State of North Carolina.

“School Board Attorney” shall mean the person appointed by the School Board to serve as its counsel, or the designee of such Person.

“School Facilities” shall mean those facilities of the school system including ancillary plants, auxiliary facilities, educational facilities, and educational plants, which a need is created for by new Residential Construction.

“School Impact Fee” shall mean an impact fee which is imposed on new Residential Construction in connection with and as a condition of the issuance of a Certificate of Occupancy or final inspection and which is calculated to defray all or a portion of the costs of the School Facilities required to accommodate the impact to the school system of that new Residential Construction, and which fee is applied to School Facilities which reasonably benefit the new Residential Construction. An “Impact Fee” means any impact fee established pursuant to Sec. 7-21 of this Ordinance or an independent fee calculated and approved pursuant to Sec. 7-33 of this Ordinance.

“School Impact Fee Fund” shall mean the separate special revenue fund created pursuant to Sec. 7-35 of this Ordinance.

“School Impact Fee Schedule” means the impact fee amounts due and payable pursuant to Sec. 7-21, as may be amended from time to time.

“School Impact Fee Study” shall mean the study by Tischler & Associates entitled “School Impact Fees”, dated September 26, 2001 and as supplemented pursuant to Sec. 7-6 of this Ordinance.

“School System” shall mean the school facilities which are used to provide instruction within the public schools operated by law under control of the School Board.

“Single-Family Detached House” shall mean a detached Dwelling Unit and which is not considered to be a Manufactured home.

“Superintendent” shall mean the chief administrative officer of the Durham Public Schools, or his/her designee.

Sec. 7-3. Rules of Construction.

For the purpose of the administration and enforcement of this Ordinance, unless otherwise stated in this Ordinance, the following rules of construction shall apply:

A. In case of any difference of meaning or implication between the text of this Ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.

B. The word “shall” is always mandatory and not discretionary, and the word “may” is permissive.

C. Words used in the present tense shall include the future; and words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; use of the masculine gender shall include the feminine gender.

D. The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” and “occupied for.”

E. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction “and,” “or” or “either.. .or,” the conjunction shall be interpreted as follows:

1. “And” indicates that all the connected terms, conditions, provisions or events shall apply.

2. “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

3. “Either. . .or” indicates that the connected items, conditions, provisions or events shall

apply singly but not in combination.

F. The word “includes” shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

G. All time periods contained within this Ordinance shall be calculated on a calendar day basis, including Sundays and legal holidays.

H. The terms owner, developer, builder, or applicant shall be used interchangeably in reference to the Person responsible for abiding by the provisions of this Ordinance as this Ordinance applies in a given situation.

Sec. 7-4. Findings.

It is hereby ascertained, determined and declared:

A. That the School Board has determined that capital improvements to the School System in the amount of \$101,038,036.00 as of February 4, 2003 are necessary in order to maintain current levels of service in order for new Residential Construction to be accommodated without decreasing the current levels of service.

B. That the Board of Commissioners has determined that current ad valorem tax revenue and other currently available revenues will not be sufficient to provide the capital improvements to the School System that have been requested by the School Board and are necessary to accommodate growth resulting from the approval of new Residential Construction by the Cities over which the Board of Commissioners has no control.

C. That G.S. § 153A-341 provides for the County to adopt a Comprehensive Plan to provide for, among other things, the adequate provision of schools.

D. That the implementation of a School Impact Fee to require future growth to contribute its fair share of the cost of growth necessitated capital improvements to the School System is necessary and reasonably related to the public health, safety, and welfare of the people of Durham County.

E. That providing School Facilities which are adequate for the needs of growth is in the general welfare of all residents of the County and constitutes a public purpose.

F. That the projected capital improvements to the School System and the allocation of projected costs between those necessary to serve existing development and those required to accommodate the School Facilities needs of new Residential Construction are presented in the School Impact Fee Study, and such study is hereby approved and adopted by the County and such

study is found to be consistent with the Comprehensive Plan of the County.

G. That an Intergovernmental Agreement shall be executed as soon as is reasonably possible between the County and the Cities to assist in the implementation of this Ordinance.

H. That the establishment of a School Impact Fee is consistent with and is necessary for implementing the Durham County Comprehensive Plan; necessary to ensure that Developments are assessed for their impacts to the School System; and necessary to ensure coordination of new Residential Construction with the provision of School Facilities.

I. That after a three (3) year period from the Effective Date of this Ordinance, this Ordinance will be subject to review pursuant to Sec. 7-6 herein.

J. That any deficiencies which currently exist in capacity of the School System capital improvements will be addressed with revenues other than School Impact Fees.

K. That the Board considered the short and long term public and private costs and benefits of the proposed School Impact Fee Ordinance and the School Impact Fee Study and has determined that sufficient information has been provided to enable the Board to act.

7-5. Adoption of Impact Fee Study.

The Board hereby adopts and incorporates by reference the School Impact Fee Study by Tischler & Associates, Inc. entitled "School Impact Fees," dated September 26, 2001 and as supplemented pursuant to Sec. 7-6 of this Ordinance.

7-6. Review.

A. The Impact Fee Study may be reviewed by the Board, at least once every three (3) years. The purpose of this review is to demonstrate that this Impact Fee does not exceed reasonably anticipated costs associated with growth necessitated capital improvements. In the event the review of the Impact Fee Study required by this section alters or changes the assumptions, conclusions and findings of the School Impact Fee Study accepted by reference in Sec. 7-5 then such study shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and the School Impact Fee shall be amended in accordance therewith.

B. The initial and each subsequent review shall include all of the following that is to be compiled into a report:

1. Recommendations on amendments, if appropriate, to these procedures;
2. Proposed changes to the Capital Improvements Program, including the

identification of school facility projects anticipated to be funded wholly or partially with School Impact Fees;

3. Proposed changes to the School Impact Fee Schedule;

4. Proposed changes in the School Impact Fee calculation methodology;

5. Other data, analysis or recommendations as the Administrator may deem appropriate, or as may be requested by the Board.

C. The Administrator shall submit the report to the Board, which shall receive the report and take such actions as it deems appropriate.

D. The failure to prepare or to submit a report as provided herein shall not affect the effectiveness or the administration of this Ordinance.

Secs. 7.6 - 7.20. Reserved.

ARTICLE II - APPLICABILITY

Sec. 7-21. Imposition.

A. Except as provided hereafter and except to the extent exempted by general or local law, all new Residential Construction occurring within the incorporated and unincorporated areas of the County shall be subject to the provisions of this Ordinance and the imposition of School Impact Fees.

B. Upon this Ordinance becoming effective, all new Residential Construction occurring within the County shall pay the following School Impact Fee according to the following School Impact Fee Schedule:

Single-Family Detached House including Manufactured Homes \$2,000.00 per Dwelling Unit.

All other new Residential Construction (including Multi-Family Dwelling Units) \$1,155.00 per Dwelling Unit.

C. The School Impact Fee shall be assessed at the time an application for a Building Permit is submitted. The School Impact Fee shall be paid prior to the issuance of a Certificate of Occupancy. Where a Certificate of Occupancy is not required the School Impact Fee shall be paid prior to final inspection.

D. Exemptions. An exemption must be claimed by the Applicant or it shall be waived.

Payment of the School Impact Fee shall not apply to the following situations if the Applicant clearly demonstrates with competent substantial evidence to the Administrator one of the following:

1. New Residential Construction for which a completed application for Building Permit has been submitted to the Administrator prior to the effective date of this Ordinance.

2. Facilities provided by the Federal Government, the State of North Carolina, the County, the Cities, or any subdivision or agency thereof shall be exempt from this Ordinance.

3. Other Uses. No School Impact Fee shall be imposed on a use, development, project, structure, building, fence, sign, public or private utility, or other non-residential construction activity that cannot result in an increase in the demand for school facilities. An Applicant who requests an exemption pursuant to this subsection for an activity not specifically enumerated herein shall request a determination from the Administrator that the activity does not result in an increase in a demand generator for School Facilities. An Applicant may appeal such a determination pursuant to Sec. 7-36 of this Ordinance.

4. Alterations or Expansions. No School Impact Fee shall be imposed for alterations or expansions of a Dwelling Unit that exists on the effective date of this Ordinance where no additional Dwelling Units are created. However, where an alteration or expansion will create an additional Dwelling Unit, a School Impact Fee equivalent to the difference between the School Impact Fee amount for the existing use and the new use shall be due for each additional Dwelling Unit pursuant to the School Impact Fee Schedule in place at the time of the change in circumstances.

5. Accessory Buildings. No School Impact Fee shall be imposed for construction of Accessory Buildings or Structures that cannot create additional Dwelling Units.

6. Replacement of Dwelling Unit. No School Impact Fee shall be imposed for the replacement of a Dwelling Unit, in whole or in part, as long as the Owner can demonstrate that the same use existed at the time that this School Impact Fee Ordinance became effective. However, where a replacement will create a greater student demand generator, as defined in the School Impact Fee Study, a School Impact Fee equivalent to the difference shall be due for the resulting Dwelling Unit pursuant to the School Impact Fee Schedule in place at the time of the change in circumstances.

7. Manufactured Homes. No School Impact Fee shall be imposed for the issuance of a Manufactured home permit for a Manufactured Home where the Applicant is able to demonstrate to the Administrator that a School Impact Fee has previously been paid for the lot upon which the Manufactured Home is to be situated.

E. Waivers. School Impact Fees on new Residential Construction within communities

and subdivisions providing housing for persons who are 55 years of age or older may be waived. New Residential Construction within communities and subdivisions meeting the requirements of 42 U.S.C. § 3607 will not be presumed to be waived from paying the School Impact Fee. For the School Impact Fee to be waived the following is required:

1. The County shall be informed at the time of platting that such community or subdivision is intended to provide housing for persons who are 55 years of age or older. Where platting has occurred prior to the effective date of this Ordinance, the County shall be informed at the time of the application for a Building Permit that the new Residential Construction for which the Building Permit is requested is intend to provide housing for persons who are 55 years of age or older; and

2. Prior to the issuance of a Certificate of Occupancy or, where a Certificate of Occupancy is not required, prior to final inspection, a Restrictive Covenant limiting the use of the property by providing that no one under the age of 21 is permitted to permanently reside on the property shall be filed with the deed on the parcel for which the School Impact Fee waiver is sought; and

3. Prior to the issuance of a Certificate of Occupancy, or where a Certificate of Occupancy is not required, prior to final inspection, a copy of the recorded Restrictive Covenant shall be produced to the County in lieu of payment of the School Impact Fee. However, where a breach or dissolution of such Restrictive Covenant occurs, a School Impact Fee shall be due pursuant to the School Impact Fee Schedule in place at the time of the change in circumstances.

F. Effect of Payment of School Impact Fees on Other Applicable County Land Development Regulations:

1. The payment of School Impact Fees shall not entitle the Applicant to a Building Permit, Certificate of Occupancy, or a final inspection as such other requirements, standards and conditions are independent of the requirements for payment of a School Impact Fee.

2. Neither these procedures nor this Ordinance shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the Durham County Comprehensive Plan, the Durham County Zoning Ordinance, or the Durham County Code of Ordinances which shall be operative and remain in full force and effect without limitation.

G. Any new Residential Construction which is determined to be waived from the payment of School Impact Fees but which, as a result of a change in circumstances, produces a Dwelling Unit not exempt nor entitled to a waiver pursuant to Subsections D or E hereto, shall pay the School Impact Fee imposed by Subsection A according to the Impact Fee Schedule in effect at such time as the change in circumstances occurs.

H. It shall be the policy of the Board that no more than one-half of the amount necessary to defray all of the costs of the School Facilities required to accommodate the impact to the school system of new Residential Construction shall be generated from impact fees imposed by this ordinance.

Sec. 7-22. Affected Area.

A. School Impact Fee District. School Impact Fees shall be imposed on new Residential Construction within all of Durham County not otherwise exempted. For purposes of this Ordinance, the entire County shall be considered one school impact fee district.

B. Types of Development Affected. These procedures shall apply to all new Residential Construction as herein defined that is not exempted or waived pursuant to Sec. 7-21.

Secs. 7-23 - 7-30. Reserved.

ARTICLE III - PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF SCHOOL IMPACT FEES.

Sec. 7-31. Imposition.

The County shall calculate School Impact Fees at the time of Building Permit application. School Impact Fees shall be paid by the Applicant prior to issuance of a Certificate of Occupancy. Where a Certificate of Occupancy is not required for new or additional Residential Construction that is subject to this Ordinance, the School Impact Fee shall be paid prior to final inspection.

Sec. 7-32. Calculation.

A. Upon receipt of a complete application for a Building Permit, the Administrator shall determine (a) whether it is a residential or non-residential use and (b) the number of new Dwelling Units.

B. After making these determinations, the Administrator shall calculate the applicable School Impact Fee by multiplying the number of Dwelling Units created by the new Residential Construction by the appropriate School Impact Fee amount pursuant to the School Impact Fee Schedule, incorporating any applicable offsets. If the Applicant has requested an offset pursuant to Sec. 7-34 of this Ordinance, that offset shall be calculated as set forth therein and subtracted from the otherwise applicable School Impact Fee if such offset applies.

C. An Applicant may request at any time a non-binding estimate of School Impact Fees due for a particular development, however, such estimate is subject to change when a

complete application for a Building Permit for new Residential Construction is made.

D. School Impact Fees shall be calculated based on the School Impact Fee Schedule, pursuant to Sec. 7-21, in effect at the time of the County's receipt of a completed Building Permit application except where provided for in this Ordinance.

Sec. 7-33. Offsets.

A. Offsets. Offsets against the amount of an School Impact Fee due from new Residential Construction may be provided for the donation of land or cash by an Applicant if such land or cash assists in meeting the demand generated by the new Residential Construction and if either

(a) the costs of such land have been included in the School Impact Fee calculation methodology, and

(b) the land donated is determined by the Administrator and the Superintendent to be a reasonable substitute for the School Impact Fee due. Offsets are not retroactive to include donations of land made prior to the effective date of this Ordinance.

B. Requests for offsets shall be submitted at the time of filing the Site Development Permit application. The request for an offset shall be accompanied by relevant documentary evidence establishing the eligibility of the Applicant for the offset. When a request for an offset is received, the Administrator shall:

1. calculate the applicable School Impact Fee without the offset; and

2. shall then determine, after consultation with the Superintendent whether an offset may apply and, if so, the amount of the offset;

3. the offset shall then be applied against the School Impact Fee due; provided, however, that in no event shall an offset be granted in an amount exceeding the School Impact Fee due.

C. No donations of land by an Applicant will occur without the formal approval of the School Board.

D. The amount of the offset shall be the value of the donated land determined by fair market value established by private MAI appraisers acceptable to the School Board and the County Board of Commissioners. The Applicant shall bear the cost of the MAI appraisal.

E. The date of valuation shall be the date of conveyance of the site. If the appraisal does not conform to the requirements of this Ordinance and the applicable administrative

regulations, the appraisal shall be corrected and resubmitted.

F. The offset shall be granted at such time as the property which is the subject of the donation has been conveyed to and accepted by the School Board. No Certificates of Occupancy shall be issued or, where a Certificate of Occupancy is not required, any final inspections conducted until such property is conveyed to the School Board. To convey land to the School Board the following provisions shall be met at no cost to the School Board and all documents shall be in a form approved by the School Board Attorney:

1. The delivery to the School Board of a complete and current abstract of title or a title insurance commitment to insure said property for the amount equal to the value of the offset; and

2. The delivery to the School Board, of a general warranty deed, in appropriate form, with sufficient funds for recording same based upon the agreed value of the property; and

3. A Tax Receipt evidencing the payment of taxes for the current year; and

4. The issuance of a title insurance policy subsequent to recording of the deed;

and

5. Any and all other documents reasonably required by the School Board Attorney.

G. Voluntary cash contributions shall be considered an offset when the payments are made to the County for the benefit of the Public Schools subsequent to the adoption of this ordinance, including payments made as a condition of site plan, zoning, or other land use approval.

H. At the request of the Applicant, the offset shall be prorated as to all lots in one subdivision owned by the Applicant. Once the offset has attached to the lots in said subdivision, it shall be unaffected by a change in ownership of the lot, and shall be available to successors and assigns of the Applicant.

I. Failure to apply for the offset within the time period required shall be deemed a waiver of the offset, regardless of transfer of title to such lands.

Sec. 7-34. Payment/Collection.

A. Except as otherwise provided in this Ordinance, an Applicant shall pay the School Impact Fees as set forth in Sec. 7-21, School Impact Fee Schedule, unless:

1. The Applicant is determined to be entitled to a full offset; or

2. The Applicant is determined to not be subject to the payment of School Impact Fees pursuant to Sec. 7-21 D or E.

B. The Durham County Tax Administrator shall collect the School Impact Fee prior to the issuance of a Certificate of Occupancy for the new Residential Construction. Where a Certificate of Occupancy is not required the School Impact Fee shall be paid prior to the final inspection.

C. Any School Impact Fee collected by the County shall be held separate and distinct from all other revenues in the School Impact Fee Fund.

D. The payment of the School Impact Fee shall be in addition to all other fees, charges or assessments due for the issuance of a Building Permit, a Certificate of Occupancy, and a final inspection.

Sec. 7-35. County Enforcement

In additions to the remedies provided in Chapter 1 of the Durham County Code of Ordinances, the County Attorney is specifically authorized to take any and all steps and actions that are legally available to the County, including any court proceedings as are authorized by law, against any person who fails, neglects or refuses to pay a School Impact Fee as required by Sec. 7-21.

Knowingly furnishing false information to the Administrator or other official in charge of the administration of this Ordinance on any matter relating to the administration of this Ordinance shall constitute a violation of this Ordinance.

Sec. 7-36. Appeals.

A. An Applicant who is required to pay a School Impact Fee pursuant to Sec. 7-21 hereto shall have the right to request a hearing before the Board.

B. Such appeal hearing shall include but not be limited to the review of the following:

1. The application of the School Impact Fee pursuant to Sec. 7-21 hereto.
2. Denial of an offset pursuant to Sec. 7-33 hereto.

C. Except as otherwise provided in this Ordinance, the Applicant shall request such appeal hearing within ten (10) days of the following, whichever is applicable:

1. Payment of the School Impact Fee; or
2. Denial of an offset; or
3. A change in circumstances that requires payment of the School Impact Fee.

D. Failure to request an appeal hearing within the time provided shall be deemed a waiver of such right.

E. The request for an appeal hearing shall be filed with the Board through the Clerk to the Board. The request shall contain the following:

1. The name and address of the Applicant or successor in interest; and
2. The legal description of the property in question; and
3. If paid, the date the School Impact Fee was paid with a copy of the original receipt or cancelled check; and
4. A statement of the reasons why the hearing is requested and supported by documentation and exhibits as to why the School Impact Fee should not be paid.

F. Upon receipt of such request, the Administrator shall schedule an appeal hearing before the Board at a regularly scheduled meeting or a special meeting called for the purpose of conducting such hearing and shall provide the Applicant written notice of the time and place of the hearing. The Administrator shall also notify the School Board, being an interested party, of any such appeal hearings. The appeal hearing shall be held within forty-five (45) days of the date that the request for such hearing was properly filed.

G. Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the appeal hearing shall be conducted in a fair and impartial manner with each interested party having an opportunity to be heard and to present information and evidence. The Board shall make the final determination. A determination shall be in writing and issued within thirty (30) days of the hearing.

Secs. 7-37 - 7-40. Reserved.

ARTICLE IV - ESTABLISHMENT OF SCHOOL IMPACT FEE FUND, APPROPRIATION OF IMPACT FEE FUND, AND REFUNDS

Sec. 7-41. School Impact Fee Fund.

The County shall establish a School Impact Fee Fund for School Impact Fees. Such Fund shall clearly be identified as monies collected as School Impact Fees. All School Impact Fees collected by the County shall be deposited into the School Impact Fee Fund.

Sec. 7-42. Appropriation of School Impact Fee Funds.

A. In General. School Impact Fees shall be appropriated for School Facilities necessitated by new Residential Construction and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the County or the School Board to finance such School Facilities.

B. School Impact Fees shall, upon receipt by the County, be deposited into the School Impact Fee Fund. The School Impact Fees shall remain in the Fund until transferred to the School Board or expended by the County pursuant to this section.

C. The monies transferred from the School Impact Fee Fund shall be used solely to provide School Facilities which are necessitated by new Residential Construction, consistent with and as set forth in subsection D, below, and shall not be used for any expenditure that would be classified as an operating expense, routine maintenance, or repair expense. The Administrator shall establish and implement necessary accounting controls to ensure that all School Impact Fees are properly deposited, accounted for and appropriated in accordance with this Ordinance and any other applicable legal requirements.

D. School Impact Fee Fund monies shall be used only for the following:

1. Costs of School Sites; and
2. School Building Costs; and
3. Relocatable Classroom Costs; and
4. Building Contents Costs; and
5. Costs of Non-Building Improvements; and
6. Costs of Vehicles.

E. Additionally, School Impact Fee Fund monies may be used for the following:

1. repayment of monies borrowed from any budgetary fund of the County subsequent to the effective date of this Ordinance, where such borrowed monies were used to fund growth necessitated capital improvements to School Facilities as provided herein.

2. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the County to fund growth-necessitated improvements to the School System subsequent to the effective date of this Ordinance.

F. The School Board shall provide an annual accounting to the County in a report format containing a summary of the School Impact Fees transferred to the School Board during the previous year and a detailed description of the uses and expenditures for which the net School Impact Fee revenue was expended during the preceding year. At a minimum the report shall contain the following:

1. the projects funded in whole or in part with the School Impact Fee Funds; and
2. the location of the projects; and
3. the capacity in number of students served by the projects; and
4. the square footage of each project.

Sec. 7-43. Refunds.

A. Cancellation or Expiration of Building Permit. An applicant who has paid a School Impact Fee for new Residential Construction for which the Building Permit or Manufactured home permit has expired or been cancelled prior to commencement of the School Facilities impact construction for which the Building Permit or Manufactured home permit was issued, and no work having been done on the new Residential Construction shall be eligible to request a refund from the School Board of School Impact Fees paid.

Requests must contain the following:

1. documentation evidencing the expiration or cancellation of the Building Permit or Manufactured home permit; and
2. documentation evidencing that the School Facilities construction has not commenced; and
3. requests for a refund shall include all information required in Sec. 7-43 D, as appropriate, and shall be submitted to the Board for approval.

B. Failure of Board to Use the School Impact Fee Funds Within Time Limit. The Applicant may request a refund from the Board of School Impact Fees paid by an Applicant if the Board has failed to use or appropriate the School Impact Fees collected from the Applicant within the time limits as follows:

1. encumbered prior to the end of the fiscal year immediately following the sixth anniversary of the date upon which such fees were paid; or

2. expended prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such fee were paid.

3. for purposes of this section, fees collected shall be deemed to be spent or encumbered on the basis of “the first fee in shall be the first fee out.”

4. refunds shall be made only in accordance with the following procedure:

a. the Applicant or a successor in interest shall request the refund within one (1) year following the end of the calendar year immediately following six (6) or nine (9) years from the date on which the fee was received; and

b. description and documentation of the Board’s non-use of the School Impact Fees; and

c. requests for a refund shall include all information required in Sec. 7-43 D, as appropriate, and shall be submitted to the Board for approval.

C. Abandonment of Development After Initiation of Construction. An Applicant who has paid a School Impact Fee for new Residential Construction for which a Building Permit or Manufactured home permit has been issued and pursuant to which construction has been initiated, may be eligible for a refund from the Board of School Impact Fees paid if all of the following apply:

1. construction must have been abandoned prior to issuance of a Certificate of Occupancy or the final inspection; and

2. the Applicant or successor in interest shall not be eligible for a refund unless the uncompleted building is completely demolished pursuant to a valid demolition permit or the Manufactured home removed; and

3. requests for refunds shall be by written request made within sixty (60) days following demolition, or removal as applicable, of the structure; and

4. requests for a refund shall include all information required in Sec. 7-43 D, as appropriate, and shall be submitted to the Board for approval.

D. Requests for refunds must be made by written request to the Clerk to the Board within the time limits as established herein. The Applicant shall submit:

1. a notarized sworn affidavit stating that the individual requesting the refund is the Applicant on which the School Impact Fee was paid; and
2. name and address; and
3. the location of the property which was the subject of the Building Permit; and
4. the date the Building Permit was issued; or the date of expiration, or that it was declared to be invalid; and
5. the amount of the School Impact Fee paid and copies of original receipts or cancelled checks evidencing such payments; and
6. a copy of the completed demolition permit if applicable.

E. Upon receipt of a completed request for a refund, the Administrator shall review the request and documentary evidence submitted by the Applicant as well as such other information and evidence as may be deemed relevant. After complete verification and satisfaction of the requirements, the Board shall refund the School Impact Fee from the School Impact Fee Fund, as established pursuant to Sec. 7-42.

Secs. 7-44 - 7-50. Reserved.

ARTICLE V - MISCELLANEOUS

Sec. 7-51. Conflict.

To the extent of any conflict between any other County ordinances and this Ordinance, this Ordinance shall be deemed to be controlling.

Sec. 7-52. Severability

A. If any section, subsection, sentence, clause, phrase or portion of these Procedures is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of these procedures shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of these procedures nor impair or nullify the remainder of such Procedures which shall continue in full force and effect.

B. If the application of any provision of these procedures to any new Residential Construction is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the Board is that such decision shall be limited to the specific new Residential Construction immediately involved in the controversy, action or proceeding in which such

decision of invalidity was rendered. Such decision shall not affect, impair, or nullify these procedures as a whole or the application of any provision of these procedures to any other Residential Construction.

2. This Ordinance shall be in full force and effect on and after January 1, 2004.